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Spokas v. State Respondent's Brief Dckt. 44851

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ERIC SCOTT SPOKAS,)	
)	No. 44851
Petitioner-Appellant,)	
)	Ada County Case No.
v.)	CV01-2016-18072
)	
STATE OF IDAHO,)	
)	
Defendant-Respondent.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE PATRICK H. OWEN
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Eric Scott Spokas appeals from the district court's order denying his motion for appointment of post-conviction counsel.

Statement Of The Facts And Course Of The Proceedings

Spokas was charged with attempted strangulation. (#43933 R., pp. 24-25.) He pleaded guilty to a reduced charge of aggravated assault via an Alford plea (#43933 R., p. 49, 51-52; #43933 Tr., p. 6, L. 23 – p. 7, L. 5; p. 17, L. 18 – p. 18, L. 17), was sentenced to four years imprisonment with two years fixed, and was placed on probation (#43933 R., p. 86). Spokas appealed his sentence and judgment of conviction, which the Idaho Court of Appeals later affirmed in an unpublished opinion. State v. Spokas, 2016 Unpublished Opinion No. 625 (Idaho App., Aug. 1, 2016).

Spokas filed a petition for post-conviction relief alleging ineffective assistance of trial counsel. (See R., pp. 4-8.) There were no affidavits or supporting documents accompanying the petition. (See generally, R.) Spokas also filed a Motion To Proceed In Forma Pauperis And Supporting Affidavit (R., pp. 9-12), a Motion For Appointment Of Counsel (R., pp. 13-14), and an Affidavit In Support Of Motion For Appointment Of Counsel (R., pp. 15-16).

The district court issued a notice of intent to dismiss Spokas's petition. (R., pp. 18-26.) In the notice the court found that Spokas could not show ineffective assistance based on counsel's alleged failure to investigate or prepare for trial, because Spokas pleaded guilty and did not go to trial—as a result, “there was no right to relief.” (R., p.

23.) Moreover, the court found that “Spokas never filed any affidavits creating a factual issue regarding his claim that his counsel failed to address or argue facts and witness statements,” and that the court was “not required to accept mere conclusory allegations, unsupported by admissible evidence, or a petitioner’s conclusions of law.” (R., p. 24.) The district court accordingly indicated its intent to dismiss Spokas’s petition, and contemporaneously “denied Spokas’ motions for appointment of counsel and to proceed *in forma pauperis*.” (R., pp. 19, 24-25.)

Spokas filed a response to the district court’s notice of intent to dismiss. (R., pp. 27-30.) The response was unverified, unsigned, and not supported by any affidavits or other evidence. (See generally, R., pp. 27-30.) In it, Spokas addressed the court’s denial of his motions to proceed *in forma pauperis* and for appointment of counsel. Spokas claimed that “[post-conviction] counsel is required to present a meaningful claim of ineffective assistance of counsel” due to the complexity of the issues involved; that the Sixth Amendment “guarantees effective assistance of counsel at all stages of criminal proceedings regardless of indigent status”; and that a “dismissal on these grounds constitutes a violation of the Petitioner[’]s right to counsel under the Sixth Amendment and the right to due process under the Fourteenth Amendment and would tend to indicate prejudice against poor or needy people by the State of Idaho.” (R., pp. 27-28.)

The district court issued an order summarily dismissing the petition. (R., pp. 31-37.) The court maintained its original rationales for dismissal—failure to state a right to relief and lack of evidence—but also made note of why Spokas’s Response to the notice was unavailing: “Spokas’s Response is not signed or verified and adds no factual issue regarding his claim.” (R., p. 36.)

Spokas timely appealed from the district court's order summarily dismissing his petition. (R., pp. 39-42.)

ISSUE

Spokas states the issue on appeal as:

Did the district court abuse its discretion when it denied Mr. Spokas' motion for appointment of counsel?

(Appellant's brief, p. 3.)

The state rephrases the issue as:

Has Spokas failed to show the district court abused its discretion when it denied his motion for appointment of counsel?

ARGUMENT

Spokas Fails To Show The District Court Abused Its Discretion In Denying His Motion To Appoint Counsel

A. Introduction

Spokas argues that the district court abused its discretion by denying his motion for the appointment of counsel. (Appellant’s brief, pp. 4-6.) He claims the court erred by applying an incorrect standard, and failed to look to whether Spokas “alleged facts showing the possibility of a valid ineffective assistance of counsel claim that a reasonable person with adequate means would retain counsel to further investigate.” (Appellant’s brief, p. 5.)

This argument fails because the district court determined Spokas failed to show he had a right to relief and failed to support his claims with evidence. (R., pp. 35-37.) By definition this was a failure to show any possibility of a valid ineffective assistance of counsel claim. Accordingly, the court did not abuse its discretion by dismissing Spokas’s petition and denying his motion for the appointment of counsel.

B. Standard Of Review

Summary dismissal is appropriate where the petitioner’s evidence raises no genuine issue of material fact. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007). On review of a summary dismissal of a post-conviction petition, “this Court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party.” Id. at 523, 164 P.3d at 803.

“A decision to grant or deny a request for counsel in post-conviction cases is reviewed for an abuse of discretion.” Shackelford v. State, 160 Idaho 317, 325, 372 P.3d 372, 380 (2016) (citing Murphy v. State, 156 Idaho 389, 393, 327 P.3d 365, 369 (2014)).

C. The District Court Properly Denied Spokas’s Motions For Appointment Of Counsel, As Spokas Failed To Show Any Possibility Of A Valid Claim

Post-conviction motions for appointment of counsel are “governed by I.C. § 19–4904, which provides that in proceedings under the UCPA, a court-appointed attorney ‘may be made available’ to an applicant who is unable to pay the costs of representation.” Shackelford, 160 Idaho at 325, 327 P.3d at 380 (quoting I.C. § 19–4904). “The standard for determining whether to appoint counsel for an indigent petitioner in a post-conviction proceeding is whether the petition alleges facts showing the possibility of a valid claim.” Id. (citing Murphy, 156 Idaho at 393, 327 P.3d at 369).

To show a valid claim of ineffective assistance of counsel, a defendant must satisfy a two-prong test and show both that 1) “counsel’s representation fell below an objective standard of reasonableness,” and 2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland v. Washington, 466 U.S. 668, 687–95 (1984). A reviewing court’s “scrutiny of counsel’s performance must be highly deferential”; therefore, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Id. at 689.

Petitioners that plead guilty, and who therefore do not proceed to trial, do not have a “right to relief” where the claimed ineffectiveness stems from alleged failures to prepare for trial:

Bjorklund also claims that his counsel was ineffective for failing to bring a motion to change venue and for failing to fully investigate the underlying criminal charges. The district court found that there was no right to relief related to these allegations because Bjorklund pled guilty to the crime. Even if true, these matters could have only affected the representation of Bjorklund had the matter gone to trial, which it did not. Hence, there was no right to relief.

Bjorklund v. State, 130 Idaho 373, 377, 941 P.2d 345, 349 (Ct. App. 1997).

“In determining whether the appointment of counsel would be appropriate, every inference must run in the petitioner’s favor where the petitioner is unrepresented at that time and cannot be expected to know how to properly allege the necessary facts.” Shackelford, 160 Idaho at 325, 372 P.3d at 380 (quoting Melton v. State, 148 Idaho 339, 342, 223 P.3d 281, 284 (2009) (quotation marks omitted)). Nevertheless, courts are not “required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law.” State v. Payne, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008) (citing Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994)).

Here, the district court correctly determined that Spokas had no right to relief and failed to support his claims with admissible evidence. (R., pp. 36-37.) As such the district court correctly dismissed his petition, and denied his motion for appointment of counsel. Spokas’s claims appear primarily to relate to errors in trial preparation or presentation:

There exists evidence of material facts and witness statements which were omitted or not given due consideration. Defense counsel failed to [address] or argue such, which would have been exculpatory or mitigating and should be considered ineffective.

...

[Counsel] failed to [address] video evidence, physical evidence medical evidence or lack thereof. Failed to address evidence of alleged victim[']s

habits and routine practices, [character] and substance abuse, statements of character and existing physiological condition of alleged victim, namely brain tumors.

(R., pp. 5-6 (capitalization altered).)

These allegations fail to establish even a possibility of a claim of ineffective assistance of counsel, such that counsel should have been appointed. First, per Bjorklund, defendants who plead guilty cannot show a right to relief for counsel's faulty trial preparation. Bjorklund, 130 Idaho at 377, 941 P.2d at 349. This is precisely what Spokas appears to be claiming here; claims that evidence was ignored, undiscovered, or otherwise mismanaged are claims relating to the presentation of a case at trial. Because Spokas pleaded guilty he never went to trial, and like Bjorklund, he had no right to relief to claim ineffective assistance of counsel based on evidentiary, trial-level errors.

Second, even if Spokas had viable claims, he failed to support them with any facts or evidence. Spokas repeatedly claimed there were bodies of evidence supporting his claims—but never stated what the evidence was. Beyond broad references to unspecified “material facts,” “witness statements,” “exculpatory” evidence, “video evidence,” “physical evidence,” and “medical evidence,” Spokas's verified petition alleges only one

fact: that his victim has, or at some point had, brain tumors.¹ (R., p. 6.) This unadorned fact falls far short of establishing a claim for ineffective assistance of counsel. Because even if the allegation were true, Spokas did not explain below, and does not attempt to explain on appeal, how the purported existence of brain tumors affected the case or affected his counsel's performance below. (See generally, R.; see generally, Appellant's brief.)

To sum up, Spokas alleged a host of trial-preparation claims to which he had no right to relief, and for which he provided no supporting evidence. For the single fact he alleged, he failed to explain how it was relevant at all, much less did he connect it to a valid claim of ineffective assistance of counsel. Because Spokas's petition failed to show even a possibility of a valid claim, the district court correctly denied his motion for the appointment of counsel.

¹ Spokas filed a "Petitioner[']s Response to the Notice of Intent to Dismiss Petition for Post-Conviction Relief" which alleged additional facts—but which was not signed, not verified, and was not supported by any affidavits or any other evidence. (See R., pp. 27-30.) Post-conviction petitions for relief must be verified and must contain either "[a]ffidavits, records or other evidence supporting its allegations," or a statement explaining the lack of evidence. I.C. § 19-4903; Pentico v. State, 159 Idaho 350, 354, 360 P.3d 359, 363 (Ct. App. 2015). Applying that standard here, the district court noted that "Spokas' Reponse is not signed or verified," and as such it "adds no factual issue regarding his claim." (R., p. 36.) Spokas has not challenged this finding on appeal. (See generally, Appellant's brief.) Nevertheless, to the extent Spokas appears to rely on the unverified facts found in the Response (see, e.g. Appellant's brief, p. 6) the state contends these alleged facts are contradicted by the record (such as alleged facts showing that Spokas "was at work or otherwise not present at the time of the alleged crime," despite his on-the-record guilty plea admissions of being present), inadmissible (such as hearsay statements regarding the victim's alleged character or medical conditions), speculative (such as statements that trial counsel was "pre-occupied with other matters relating to an impending change in employment"), and in any event, given Spokas's guilty plea, still fail to show even a possibility of a valid claim for ineffective assistance of counsel. (See R., pp. 28-29.)

Spokas argues on appeal that the district court erred by not “discuss[ing] the merits of Mr. Spokas’ motion for appointment of counsel separately from the merits of his ineffective assistance” claim; he avers this was an error because the ““decision to appoint counsel and the decision on the merits of the petition if counsel is appointed are controlled by two different standards.”” (Appellant’s brief, pp. 4-5 (quoting Swader v. State, 143 Idaho 651, 655 (2007)).)

However, Spokas fails to show that the district court applied the wrong standard insofar as his claims would not have been sufficient to satisfy *either* standard. The district court found that Spokas had failed to state a valid claim and “failed to file any affidavits creating a factual issue regarding his claim.” (R., p. 37.) In other words, Spokas’s claims were devoid of both legal and factual support. This not only justified the dismissal of the petition, but it constituted a failure to show even the *possibility* of a valid claim—therefore justifying the denial of his motion to appoint counsel. Because Spokas’s claims fail under either test, he fails to show the district court applied the incorrect one when it denied his motion to appoint counsel.

Lastly, Spokas apparently attempts to distinguish this case from Bjorklund by taking issue with the court’s findings regarding his guilty plea:

The district court stated it intended to summarily dismiss Mr. Spokas’ petition because he “fails to identify how the result would have changed” because he “clearly admitted his guilt in a guilty plea.” (R., p. 23.) This is not correct. Mr. Spokas *did not* admit his guilt at any point. On the contrary, he pled guilty pursuant to *North Carolina v. Alford*, and has always maintained that he did not commit the crime of aggravated battery.

(Appellant’s brief, pp. 5-6 (emphasis in original).)

But Spokas fails to show what difference it would make that his guilty plea was an Alford plea. A guilty plea means the defendant does not go to trial. This is true regardless of whether it is a routine guilty plea, or an Alford guilty plea.² The rule from Bjorklund would therefore apply whether or not the plea is an Alford plea. See Bjorklund, 130 Idaho at 377, 941 P.2d at 349.

This was precisely the analysis the district court performed here: the district court noted that Spokas pleaded guilty, did not go to trial, and therefore failed “to identify how the result would have changed.” (R., p. 36.) To put it in Bjorklund’s terms, because Spokas pleaded guilty and did not go to trial, he had no right to relief for the trial-level investigatory errors alleged in his petition. Bjorklund, 130 Idaho at 377, 941 P.2d at 349. The fact that Spokas pleaded guilty via Alford, while perhaps worth noting for semantic posterity, has no bearing on the court’s correct application of Bjorklund.

Spokas failed to allege any right to relief and failed to support his claims with sufficient evidence. As a result he failed to show even a possibility of a valid claim, and the district court correctly denied his motion for the appointment of counsel.

² Idaho courts, for decades, have concluded that per North Carolina v. Alford, 400 U.S. 25 (1970), a court may accept a defendant’s guilty plea notwithstanding the defendant’s claims of innocence. (See, e.g., State v. Coffin, 104 Idaho 543, 547–48, 661 P.2d 328, 332–33 (1983) (“This Court found that ‘the defendant’s denial of criminal intent does not affect the validity of his guilty plea,’ and held that under *North Carolina v. Alford*, a voluntary plea of guilty may be accepted by a court ‘despite denial of any criminal intent.’” (quoting Sparrow v. State, 102 Idaho 60, 625 P.2d 414 (1981), internal citations omitted)).)

CONCLUSION

The state respectfully requests this Court affirm the district court's denial of Spokas's motion for appointment of counsel and dismissal of his petition.

DATED this 26th day of October, 2017.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of October, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd